



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/158066

PRELIMINARY RECITALS

Pursuant to a petition filed May 29, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on July 15, 2014, at Racine, Wisconsin.

The issues for determination are whether the agency correctly counted Petitioner's IRA withdrawals as income for the purpose of determining BadgerCare+ eligibility and whether it is correctly determined the amount of his monthly income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Rhonda Kramer

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner filed this appeal to contest a denial of an application for BadgerCare+ Medicaid benefits.
3. Petitioner applied for medical benefits through the Federally Facilitated Marketplace and that application was transferred to the state and received by the local agency on or about May 20, 2014.

4. The Federal Facilitated Marketplace apparently found that Petitioner was not eligible for the Affordable Care Act health coverage. Petitioner did appeal that decision and the Health Insurance Marketplace found that he is eligible for marketplace insurance with a premium tax credit.
5. The agency denied Petitioner's request for Medicaid. The basis for the denial was that Petitioner had income in excess of the adult income limit for BadgerCare+.
6. In 2013 Petitioner had gross income of \$32,604.00 and taxable income in the amount of \$22,604.00. Apparently this was all from withdrawals from his individual retirement account. The agency averaged the taxable income and found Petitioner's income to be \$1883.66 per month.
7. Petitioner's group size is one.
8. The BadgerCare+ income limit for an adult is 100% of the Federal Poverty Level. For a group of one that is \$972.50. *See Badger Care Eligibility Handbook (BEH), §50.1.*

DISCUSSION

BadgerCare Plus is Wisconsin's medical assistance program for those who are not elderly or disabled. Effective April 1, 2014, Wisconsin state law changed and lowered the amount of adjusted gross income a household can have and still be eligible for benefits to 100% of the Federal Poverty Level for adults and 300% for children. Wis. Stat. § 49.471(4)(a). This change was to be effective January 1, 2014 but was held off until April 1 to assure coordination with other changes in healthcare options; especially the Affordable Care Act. The agency determined that Petitioner is ineligible for BadgerCare Plus because his income exceeds that new income limit.

As of February 1, 2014 new BC+ eligibility determinations use Modified Adjusted Gross Income (MAGI) rules that are based on taxable income. *BEH, §2.3.2.* The income limit for adults is 100% of the Federal Poverty Level; for 1 person that is \$972.50. *BEH, §50.1.* Under MAGI rules, the taxable portion of distribution from an IRA is counted as income for the purpose of determining BC+ eligibility. As a practical matter, unless it is a Roth IRA, all distributions from an IRA are taxable. See IRS Publication 590.

Thus the agency correctly determined that Petitioner's IRA withdrawals are countable to the extent that those withdrawals are taxable. The problem here is a fluctuating income issue. Per the *BEH*:

16.6 Fluctuating Income

If the amount or frequency of regularly received income is known, average the income over the period between payments. If neither the amount nor the frequency is predictable, do not average; count income only for the month in which it is received.

Further, a person does have an obligation to report any income change that puts income over 100% FPL, 133%, 156%, 191%, 200%, 250%, 306%, 350% or 400% of the FPL. *See BEH, 27.3.*

No evidence was presented to show the frequency of Petitioner's IRA withdrawals or the amount per withdrawal. Given that, this matter will have to be reviewed by the agency to redetermine Petitioner's BadgerCare+ eligibility based on the fluctuating income policy. Petitioner's BadgerCare+ eligibility may be on and off if income is only counted for the month of receipt.

CONCLUSIONS OF LAW

1. That the agency correctly counted Petitioner's IRA withdrawals as income.
2. That the evidence presented is not sufficient to determine how Petitioner's IRA withdrawals should be converted to monthly income under the fluctuating income policy.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to take the steps necessary to determine how to count Petitioner's income using the fluctuating income policy. A new Notice of Decision must be issued. These steps must be done within 10 days of the date of this Decision. Petitioner may again file an appeal as to how his IRA income is counted for BadgerCare+ purposes.

In all other respects, this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of August, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 14, 2014.

Racine County Department of Human Services
Division of Health Care Access and Accountability